IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4615 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANUBHAI D PATEL - Petitioner(s)

Versus

HARMANBHAI S PATEL DELETED AS PER ORDER DTD.09/01/06 & 3 - Respondent(s)

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Appearance :

MR HEMAL A DAVE for Petitioner(s) : 1,
DELETED for Respondent(s) : 1,
MS FALGUNI PATEL, AGP for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/01/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged the order dated 20th July 1988 passed by the Deputy Collector, Anand as upheld by the Collector, Kheda by

his order dated 2.8.89 and by the Additional Chief Secretary in his order dated 18.5.90.

2. The petitioner was found to be in possession and cultivating agricultural land bearing survey No.432 at Dakor admeasuring 1 acre and 14 gunthas. The authorities were of the opinion that the land was held by one Harmanbhai Somabhai Patel as a new tenure land. Since the same was transferred to the petitioner, the Deputy Collector initiated proceedings under section 84C of the Bombay Tenancy and Agricultural Lands Act and by the impugned order dated 20th July 1988 provided that the land shall vest in the Government since the condition of new tenure has been violated. The stand of the petitioner was that the land was purchased by him from Harmanbhai Somabhai for a cost of Rs.500/-.

3. The main contention raised on behalf of the petitioner was with respect to delay and laches in initiation of proceedings. Though it was contended that there is no material on record to establish that the land was a new tenure land, learned advocate for the petitioner did not seriously pursue this contention in view of the observations made by the revenue authorities in their impugned orders wherein it has clearly been held that the land was a new tenure land in the hands of

Harmanbhai Somabhai.

4.Learned advocate for the petitioner strongly urged that the authorities could not have initiated proceedings after an unreasonable period of time. He contended that there was delay of 11 years in initiation of the proceedings. He submitted that though entires were made in the year 1976, notice was issued for the first time in the year 1988. Reliance was placed on the following decisions of the Hon'ble Supreme Court and this Court to contend that the proceedings could not have been initiated after a reasonable period of time:

1.State of Gujarat v. Raghav Natha, 1969 GLR 992.

2.Bhagwanji Bawanji v. State, 1971 GLR 156.

3.State of Gujarat v. P.B.Gor, 2000 (2) GCD 1120 (Guj.)

4.Evergreen Apartment v. Spl. Secretary, 1991(1) GLR 113.

5.Asha Jamnadas Chandarana v. State of Gujarat, 2000 (0) GLHEL 200804.

5.Learned AGP Ms.Patel supported th orders passed by the revenue authrities.

6.With respect to the conclusion of the revenue

authorities that the land in question was a new tenure land, there is no serious dispute. The petitioner,therefore, could not have been validly in possession of the land. The say of the petitioner that he purchased the land for Rs.500 cannot be accepted. There can be no valid sale of immovable property without a written document. The petitioner has also not contended that there was a sale deed entered between the parties. Even otherwise, the land was a new tenure land and could not have been legally sold by Harmanbhai. On both counts, it can be concluded that the petitioner had no valid title over the land in question. The only question therefore that survives for consideration is regarding delay. As rightly pointed out by the learned AGP, this ground was never urged by the petitioner before the authorities below. From the perusal of the orders under challenge and from the perusal of the appeal and revision memos produced by the petitioner, it can be safely concluded that no such contention was raised before the revenue authorities. The question of delay cannot be decided in isolation and the same has to be addressed to on the basis of the facts arising in a given case. For want of sufficient material, it is not possible to

uphold the contention of the petitioner which has been raised by the petitioner for the first time in a petition under Article 226/227 of the Constitution of India. It is not clear as to when did the authorities notice that the petitioner was unauthorizedly occupying the land in question. In fact, perusal of the orders of the Deputy Collector and the Collector will suggest that there is no consumption of unreasonable time in initiation of proceedings contrary to what is sought to be suggested by the petitioner. The Collector in particular observed that in proceedings under section 84C of the Bombay Tenancy and Agricultural Lands Act, the unauthorized occupation of the petitioner came to the notice of the authorities and after conclusion of the proceedings before the Gujarat Revenue Tribunal, proceedings were initiated for confiscating the land. Apparently, therefore, land which was granted to Harmanbhai with condition that the same will not be transferred without permission of the authorities was occupied by the petitioner under an alleged sale. Admittedly, no permission of the authorities were obtained before the petitioner was put in possession. There was, therefore, a clear breach of non-transferability of the land in question. The

authorities, therefore, rightly decided to confiscate the land. The question of delay cannot be accepted in the facts of the present case in view of the discussion above.

7. In the result, the petition fails and is hereby rejected. Rule is discharged with no order as to costs. Interim relief is vacated.

8. At the request of the learned advocate for the petitioner this order will remain stayed till 6th February, 2006.

(Akil Kureshi, J.)

(vjn)